

# HOUSE BILL No. 1486

## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 16-22-3; IC 36-1-14.

**Synopsis:** Use of proceeds from sale of county hospital. Requires the proceeds of the sale of a county hospital to be donated to a charitable nonprofit community foundation established by the county fiscal body. Provides that the members of the county fiscal body shall serve as the board of trustees of the foundation. Specifies certain conditions on the investment and use of the proceeds.

**Effective:** July 1, 2009.

### Soliday

January 14, 2009, read first time and referred to Committee on Local Government.

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Introduced

First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

## HOUSE BILL No. 1486

A BILL FOR AN ACT to amend the Indiana Code concerning local government.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 16-22-3-17 IS AMENDED TO READ AS  
2 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 17. (a) The governing  
3 board may mortgage all or part of an interest in real or personal  
4 property owned by the hospital and may enter into a sale and leaseback  
5 of hospital property on terms and conditions acceptable to the board.

6 (b) The following property may be disposed of on terms and  
7 conditions acceptable to the board:

8 (1) Real or personal property subject to a mortgage or sale and  
9 leaseback arrangement.

10 (2) Real or personal property in which the hospital has an  
11 ownership interest as a participant in an organization or activity  
12 described in section 1(b) of this chapter.

13 (3) An arrangement in which at least two (2) hospitals participate  
14 for the provision of any hospital or related services, including  
15 participation or ownership as a tenant in common with other  
16 hospitals.

17 (c) Except as provided in subsection (b), real or personal property

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or an interest in real or personal property owned by the hospital may be disposed of as follows:

(1) Personal property:

(A) that has limited or no use to the hospital; and

(B) that:

(i) has value not exceeding fifteen thousand dollars (\$15,000); or

(ii) is traded upon purchase of other personal property;

may be disposed of without the necessity of advertising, auctioning, or requesting bids.

(2) Real property that the board considers no longer necessary for hospital purposes shall be sold after the following occur:

(A) The property is appraised by three (3) disinterested owners of taxable real property of the county.

(B) The board publishes notice of the sale one (1) time at least seven (7) days before the date of the sale.

(C) The sale is approved by the commissioners.

The board shall determine the time, terms, and conditions of the sale of property.

(3) Personal property other than property described in subdivision

(1) shall be sold at public auction. The board shall publish notice of the sale one (1) time at least seven (7) days before the date of the sale. If sealed bids are solicited in the published notice of the sale, the bids must be opened in public on the date and time of the sale to satisfy the public auction requirement.

Upon the sale of real property under this subsection and the payment of the purchase price, the board and the commissioners shall execute a deed of conveyance to the purchaser. The proceeds of all sales are a part of the hospital funds to be held and used for the use and benefit of the hospital.

(d) If a trust (as defined in IC 30-4-1-1(a)) submits a bid in a sale or lease conducted under subsection (b), (c), or (e), the bid must identify each:

(1) beneficiary of the trust; and

(2) settlor empowered to revoke or modify the trust.

(e) If it is determined by the board, the county executive, and the county fiscal body, by joint resolution, that:

(1) the hospital should cease doing business as a county hospital;

(2) the hospital should be terminated and dissolved; and

(3) the entire hospital building or buildings should be sold or leased to a for-profit corporation, **a not-for-profit corporation, a partnership, or other** entity;

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the proposed sale or lease shall be considered publicly, and the board, the county executive, and the county fiscal body shall follow the procedures of IC 16-22-6-18 concerning notice and hearing on the terms and provisions of the sale or lease. The terms and provisions of the sale or lease shall be determined by the board, the county executive, and the county fiscal body and shall be presented at a hearing as required by IC 16-22-6-18.

(f) An individual who is a:

- (1) board member in the member's capacity as a board member; or
- (2) member of:
  - (A) the county executive; or
  - (B) the county fiscal body;

is immune from potential or actual liability attributable to the individual with respect to a sale or lease under subsection (e).

(g) In the event of a sale or lease under this section, the county is not liable for:

- (1) any liabilities of the hospital that:
  - (A) were incurred on or before; or
  - (B) are incurred at any time after; the sale or lease date; or

(2) any future liabilities incurred by the successor entity; unless otherwise agreed to by the county at the time of the sale or lease in the sale or lease document. Any liabilities described in this subsection are the responsibility of the purchasing or leasing entity, unless agreed to otherwise in the sale or lease document.

(h) After the hearing on the proposed sale or lease, if it is determined by the board, the county executive, and the county fiscal body that the sale or lease should proceed, the hospital building or buildings shall be sold or leased in accordance with proposed terms and provisions.

(i) The board, the county executive, and the county fiscal body shall execute:

- (1) a deed of conveyance upon payment of the purchase price if the buildings are sold; or
- (2) a lease upon terms the board, the county executive, and the county fiscal body consider reasonable if the buildings are leased.

(j) The proceeds of the sale or lease of all of the hospital buildings must first be applied to outstanding indebtedness attributable to the hospital buildings. The commissioners shall ~~deposit~~ **donate** the balance of the proceeds from the sale or lease and any property in the hospital fund ~~in~~

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(1) a nonexpendable interest bearing trust fund from which claims are paid for county hospital claims for the indigent or any other fund that the county executive and county fiscal body designate; or

(2) the county general fund;

to a charitable nonprofit community foundation established under section 17.5 of this chapter to be held in trust for the benefit of the county.

(k) This subsection applies to a county described in section 17.5(a) of this chapter. The county treasurer shall without appropriation transfer any proceeds deposited under subsection (j) before July 1, 2009, to a charitable nonprofit community foundation established under section 17.5 of this chapter to be held in trust for the benefit of the county.

SECTION 2. IC 16-22-3-17.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 17.5. (a) This section applies to a county in which a county hospital is sold or leased under section 17 of this chapter to a for-profit corporation, a not-for-profit corporation, a partnership, or other entity after December 31, 2006.

(b) The county fiscal body shall establish a charitable nonprofit community foundation to hold the proceeds of the sale or lease in trust for the benefit of the county. The members of the county fiscal body shall serve as the board of trustees of the foundation established under this section. A member's term on the board of trustees expires when the member's term on the county fiscal body expires.

(c) The county executive shall appoint five (5) separate citizens advisory boards to develop expenditure plans for each of the five (5) permitted uses of money described in IC 36-1-14-1(d)(5). Each advisory board consists of five (5) members with expertise in the particular permitted use for which they were appointed. Each advisory board member must be a resident of the county. Each advisory board member serves a four (4) year term.

(d) The board of trustees of the foundation established under subsection (b) may contract with investment managers, investment counsel, trust companies, banks, or other finance professionals to assist the board in its investment program. Money held by the foundation must be invested in accordance with the terms of an investment policy that:

(1) is approved by the board; and

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(2) complies with the restrictions and requirements set forth in subsections (e) and (f).

(e) Money held by the foundation may be invested in either or both of the following:

(1) Mutual or pooled funds.

(2) Nonmutual or nonpooled funds.

(f) Investments with nonmutual or nonpooled funds are subject to the following restrictions and requirements:

(1) Each investment manager:

(A) shall have full investment discretion with regard to security selection consistent with the investment policies approved by the board and is expected to maintain a fully invested portfolio with not more than five percent (5%) remaining in cash;

(B) shall immediately notify the board in writing of any material changes in the investment outlook, strategy, portfolio structure, ownership, or senior personnel;

(C) may not make a purchase that would cause a position in the portfolio to exceed five percent (5%) of the outstanding voting shares of the company or invest in a company with the intent of controlling management;

(D) may not invest in nonmarketable securities;

(E) may not invest in nondollar denominated securities unless the manager is an international manager; and

(F) in the case of an international manager, shall maintain appropriate diversification of the currency and country exposure of the investments.

(2) An equity investment manager:

(A) may not make investments in any one (1) company that exceed eight percent (8%) of the manager's total portfolio as measured at market;

(B) shall vote proxies and share tenders in a manner that is in the best interest of the foundation and is consistent with the investment policies approved by the board;

(C) shall maintain at least twenty (20) positions in the portfolio to provide adequate diversification; and

(D) shall diversify investments by economic sector so that no sector comprises more than one hundred fifty percent (150%) of the benchmark sector weighting. If market appreciation causes the sector weighting to exceed one hundred fifty percent (150%) of the benchmark weight, the manager must bring the portfolio weighting back into

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compliance with this clause within ninety (90) days.

**(3) A fixed income manager:**

**(A) shall maintain an overall weighted average credit rating of at least:**

**(i) "Aa" as rated by Moody's; or**

**(ii) "AA" as rated by Standard & Poor's;**

**(B) may not hold more than ten percent (10%) of the portfolio in investments rated below investment grade. For purposes of this clause, split rated securities are governed by the lower rating;**

**(C) shall maintain a duration within plus or minus twenty percent (+/-20%) of the effective duration of the benchmark index;**

**(D) may not invest more than twenty-five percent (25%) of the portfolio in any one (1) economic sector with respect to the corporate sector of the portfolio; and**

**(E) may not make investments in any one issuer that exceed eight percent (8%) of the manager's total portfolio as measured at market, except for securities issued by the United States or its agencies.**

SECTION 3. IC 36-1-14-1, AS AMENDED BY P.L.2-2006, SECTION 190, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1. (a) This section does not apply to donations of proceeds from riverboat gaming to a public school endowment corporation under IC 20-47-1-3.

(b) As used in this section, "riverboat gaming revenue" means tax revenue received by a unit under IC 4-33-12-6, IC 4-33-13, or an agreement to share a city's or county's part of the tax revenue.

**(c) This subsection does not apply to the proceeds of the sale of a county hospital.** Notwithstanding IC 8-1.5-2-6(d), a unit may donate the proceeds from the sale of a utility or facility or from a grant, a gift, a donation, an endowment, a bequest, a trust, or riverboat gaming revenue to a foundation under the following conditions:

**(1) The foundation is a charitable nonprofit community foundation.**

**(2) The foundation retains all rights to the donation, including investment powers.**

**(3) The foundation agrees to do the following:**

**(A) Hold the donation as a permanent endowment.**

**(B) Distribute the income from the donation only to the unit as directed by resolution of the fiscal body of the unit.**

**(C) Return the donation to the general fund of the unit if the**

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foundation:

- (i) loses the foundation's status as a public charitable organization;
- (ii) is liquidated; or
- (iii) violates any condition of the endowment set by the fiscal body of the unit.

**(d) The proceeds of the sale of a county hospital received by a charitable nonprofit community foundation established under IC 16-22-3-17.5 are subject to the following conditions:**

**(1) The foundation retains all rights to the donation, including investment powers.**

**(2) The foundation agrees to do the following:**

**(A) Hold the donation as a permanent endowment.**

**(B) Distribute money to the county as directed by resolution of the fiscal body of the county.**

**(C) Return the donation to the county's general fund if the foundation:**

- (i) loses the foundation's status as a public charitable organization;
- (ii) is liquidated; or
- (iii) violates any condition of the endowment set by the fiscal body of the county.

**(3) No amount of the donation or the income of the donation may be deposited in the county's general fund.**

**(4) The maximum amount that may be distributed to the county in a particular year is a portion of the investment yield equal to five percent (5%) of the principal.**

**(5) Money distributed to the county under this subsection may be used only for one (1) or more of the following:**

**(A) Providing hospital care for the indigent.**

**(B) Adult education programs.**

**(C) Property tax relief.**

**(D) Economic development projects (as defined in IC 6-3.5-7-13.1(c)).**

**(E) Providing behavioral health care to indigent adults.**

**Money distributed under this subsection must be used in accordance with an expenditure plan developed by a citizens advisory group appointed under IC 16-22-3-17.5(c).**

**(6) The principal of the donation may not be distributed to the county unless the amount and the use of the money are approved by the voters of the county in a local public question held under section 1.5 of this chapter.**

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(e) As used in this section, "indigent adult" means an individual who:

- (1) is at least eighteen (18) years of age; and
- (2) has an annual gross income of not more than one hundred twenty-five percent (125%) of the federal income poverty level as determined annually by the federal Office of Management and Budget under 42 U.S.C. 9902.

SECTION 4. IC 36-1-14-1.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1.5. (a) If an expenditure of any part of the principal of a donation described in section 1(d) of this chapter in the county is approved by a resolution adopted by the county fiscal body, or if at least the number of the registered voters of the county required under IC 3-8-6-3 for a petition to place a candidate on the ballot sign a petition submitted to the circuit court clerk requesting that a local public question concerning the expenditure be placed on the ballot, the county election board shall place the following question on the ballot in the county during the next primary or general election:

"Shall the \_\_\_\_\_ (insert the name of the county) County Council spend \$ \_\_\_\_\_ (insert the amount of money that the project will cost) of the money received from the sale of the \_\_\_\_\_ (insert the name of the county) county hospital for \_\_\_\_\_ (insert the name and description of the proposed project)?".

(b) A public question under this section shall be placed on the ballot in accordance with IC 3-10-9 and must be certified in accordance with IC 3-10-9-3.

(c) The clerk of the circuit court of a county holding an election under this chapter shall certify the results determined under IC 3-12-4-9 to the county fiscal body and the county executive.

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